S.B. Civil Misc. Appeal No.1099/2006
(RSRTC Vs. Smt.Nani & ors.)

Date of Order :: 5th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. V.K.Vyas for the appellant

By way of this appeal, owner of the vehicle involved in accident, Rajasthan State Road Transport Corporation (RSRTC) seeks to question the award dated 27.10.2005 made by the Motor Accidents Claims Tribunal, Doongarpur in Claim Case No.180/2001 whereby the Tribunal has held the appellant and its driver liable for compensation on account of accidental death of Bhikha, about 30 years in age, son of claimants Nos.1 and 2, husband of claimant No.3 and father of claimants Nos.4 to 7; and has quantified compensation at Rs.3,85,068/-.

The claimants made the claim for compensation with the submissions that on 28.07.2001 at about 9:15 a.m. on the trurn of Faloj valley, the victim Bhikha while travelling in a jeep bearing registration No.RJ 12 T 0107 sustained injuries when the jeep was hit by the rear side of an oncoming bus belonging to the appellant-RSRTC bearing registration No.RJ 12 P 1841; and succumbed to injuries while undergoing treatment at Doongarpur General Hospital. The claimants alleged that the accident occurred for negligence of the bus driver, hence the

non-applicants, the driver and owner of the bus, were liable in compensation. For quantification, the claimants averred that deceased was about 30 years in age and was earning about Rs.4,500/- per month as a mason and further Rs.500/- per month in agriculture; and asserted their dependency at Rs.3,000/- per month. The appellant RSRTC, owner of the bus, submitted that the driver was taking the bus with all care and caution and the deceased was hanging out of the jeep on its driver side and hit against the rear of the bus for the mistake of the jeep driver. After making award for 'No Fault Liability' against the non-applicants and framing of necessary issues, the Tribunal proceeded with the trial of claim application wherein the claimants examined PW-1 Smt.Shimla wife of deceased, PW-2 Kantilal, another occupant of the jeep at the time of accident who too made a separate claim for compensation on account of injuries sustained in the same accident, and PW-3 Surendra Kumar, driver of the jeep in question. The claimants also produced relevant documentary evidence including the police investigation papers. The non-applicants adduced no evidence whatsoever.

It may be pointed out that the registration number of the bus of the appellant originally stated in the claim application as RJ 12 P 1841 was corrected to RJ 14 P 1841 by the claimants by moving an application for amendment on 28.01.2003 that

was not opposed by the non-applicants and was allowed by the Tribunal on 14.07.2003.

With reference to the evidence available on record and want of rebuttal on the part of non-applicants, the Tribunal held the accident to have occurred for negligent driving of the bus of the appellant bearing registration No. RJ 14 P 1841. Taking up quantification of compensation, the Tribunal did not accept the assertion of income of the deceased as made by the claimants for want of cogent evidence; but estimated his income at Rs.2,500/- per month and dependency of the claimants at Rs.1,667/- per month after deducting one-third on the personal expenditure of the deceased. Thus, taking multiplicand at Rs.20,004/- per annum, the Tribunal applied multiplier of 17 in view of the age of the deceased and the claimants; and assessed pecuniary loss at Rs.3,40,068/-. The Tribunal further allowed Rs.10,000/- to the wife of the deceased towards loss of consortium and Rs.5,000/- to each of the other claimants towards non-pecuniary loss and another Rs.10,000/- towards funeral expenses. In this manner, the Tribunal awarded compensation to the claimants in the sum of Rs.3,85,068/- and allowed interest at the rate of 7.5% per annum from the date of filing of claim application.

It has been strenuously contended by learned counsel for the appellant that the Tribunal has erred in fastening liability

for the accident on the bus driver and in failing to consider that the deceased Bhikha was hanging out of jeep; that the claimants have failed to establish negligence of the bus driver and at any rate, the present one remains a case of contributory negligence of the deceased himself and the award of compensation ought to have been reduced accordingly. Learned counsel also urged that the assessment of pecuniary loss has been much on the higher side by adopting higher multiplicand and applying higher multiplier. Learned counsel further urged that ultimate award in the sum of Rs.3,85,068/- with interest at the rate of 7.5% per annum stands much in excess of reasonable and just compensation.

Having given thoughtful consideration to the submissions made on behalf of the appellant and having examined the record of the case, this Court is satisfied that this appeal is devoid of substance.

So far the responsibility towards accident is concerned, the jeep driver, PW-3 Surendra Singh has pointed out that the roadways bus came from opposite direction in a brisk speed and rear of the bus hit his jeep smashing its hood and bending its pipe. PW-2 Kantilal and so also PW-3 Surendra Singh have stated that the victim Bhikha was sitting inside the jeep. The wife of the deceased has of course stated in her cross-examination that Bhikha was hanging out of the jeep but then

expressed her inability to say as to for whose fault the accident occurred as she was not available at the site. She was not travelling in the jeep in question and was not available at the site and her statement cannot be taken decisive of the fact that deceased Bhikha was hanging out of the vehicle in a dangerous manner so as to invite accident or to contribute to his injuries. Then significantly, though the non-applicants made an assertion in the reply about contributory negligence of the deceased but chose not to lead any evidence at all. A plea of contributory negligence of the vehicular accident victim cannot be accepted on a mere averment in the reply particularly when the non-applicants chose not to lead any evidence at all and withhold the relevant and material witnesses available with them like the bus driver and conductor. In the overall facts and circumstances of the case, the view taken by the Tribunal on the basis of material as available on record and after drawing reasonably the adverse inference for omission on the part of the non-applicants to adduce relevant evidence remains justified and does not warrant interference.

So far quantification of compensation is concerned, the deceased was about 30 years in age and has been shown working as a mason. The Tribunal has still made a moderate estimate of his income at Rs.2,500/- per month. Moreover, though the deceased had a larger family of the parents, wife

and four children to support, the Tribunal has still taken one-third towards his personal expenditure and has adopted the multiplicand only at Rs.20,004/- per annum. Application of multiplier of 17 does also appear reasonable. Non-pecuniary loss too has been allowed on a moderate scale. Of course, funeral expenses have been allowed a bit extra but in the ultimate analysis, the award of compensation in this case in the sum of Rs.3,85,068/- cannot be said to be exorbitant or highly excessive. Rate of interest at 7.5% per annum in the award made on 27.10.2005 cannot be treated as extra-ordinary or exorbitant. In the ultimate analysis, the award made by the Tribunal cannot be said to be much in excess of the just compensation to warrant interference in appeal.

Net result of the discussion aforesaid is that this appeal remains bereft of substance and does not merit admission.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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